

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

County of Coles,
Petitioner,

Vs.

Canadian National/Illinois Central Railroad Company and the
State of Illinois, Department of Transportation,
Respondents.

T04-0040

Petition for an Order regarding a separation of grades and
construction of a new bridge to replace an existing at grade
crossing carrying County Highway 18 (County Road 1000 North),
County of Coles, Illinois, over the tracks of said Canadian
National/Illinois Central Railroad Company, apportioning cost
thereof and directing an appropriate portion thereof to be borne
by the Grade Crossing Protection Fund.

ORDER

By the Commission:

On April 27, 2004, the County of Coles ("the County" or "Petitioner") filed a verified petition with the Illinois Commerce Commission ("Commission") in the above captioned matter, naming as respondents the Canadian National/Illinois Central Railroad Company ("Company") and the Illinois Department of Transportation ("Department"), seeking an order authorizing the construction of a grade separation at County Highway ("CH") 18/1000N, near Mattoon, Coles County, Illinois, the closure of the existing highway-rail grade crossing designated as DOT/AAR # 289 137V, milepost 169.55-M, and apportioning the cost thereof and directing an appropriate portion thereof to be paid by the Grade Crossing Protection Fund ("Fund").

A Pre-Hearing Conference was held on July 7, 2004. On August 4, 2004, pursuant to notice as required by law and rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's offices in Springfield, Illinois. Counsel represented the County and the Company, and Joe VonDeBur of the Railroad Section, Bureau of Transportation of the Commission as well as Jeff Harpring of the Bureau of Local Roads of the Department entered appearances. At the conclusion of the hearing, the record was marked "Heard and Taken".

Frederick J. Sherer, Coles County Engineer, testified on behalf of the County. Mr. Sherer described the scope of the project, which is the construction of a grade separation over the Company's tracks and US Route 45 at CH 18 (1000N), as part of a larger project to divert truck traffic off of Interstate 57 and around, rather than through

Mattoon. Mr. Sherer also identified and located the limits of the proposed grade separation project, on a map admitted into evidence as part of Petitioner's Group Exhibit No. 2. Mr. Sherer also testified that the bid letting for the project is currently scheduled for July of 2005, or FY06, with construction to begin within a couple of months of that letting. Construction is expected to take 18 to 24 months to complete.

Jeff Harpring of IDOT noted that, because the project will be on a State letting, all of the monies must be "in place" prior to the letting.

Mark Dwiggins, P.E., with The Upchurch Group, consulting engineers for the County, testified regarding the cost estimates for the project, admitted into evidence Petitioner's Exhibit No. 1. Mr. Dwiggins testified that, after discussion and agreement between the Commission Staff, the Company and the Petitioner's representatives, the estimated project costs were divided in such a manor as to isolate those items determined eligible for assistance from the Grade Crossing Protection Fund ("GCPF") and/or the Company. Petitioner's Exhibit No. 1 identifies the Total Estimated Cost, GCPF-eligible costs, and Company-eligible costs, as \$9,433,400, \$6,933,500, and \$5,126,100, respectively. The maximum amount available from the GCPF is 60% of those costs determined eligible by Commission Staff, or \$4,160,100. The maximum amount available from the Company is 5% of those costs determined eligible by Company Staff, or \$256,305.

Mr. Dwiggins noted that increases from the original estimates are due largely to utility relocation costs associated with electrical distribution wires and the relocation of a portion of 6th Street in the City of Mattoon.

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) the recitals of fact set forth in the prefatory of this order are supported by the evidence of record and are hereby adopted as findings of fact;
- (3) the proposed construction of a grade separation replacing the existing County Highway ("CH") 18/1000N highway-rail grade crossing of the Canadian National/Illinois Central Railroad Company's track, located near Mattoon, Coles County, should be approved;
- (4) the existing CH18/1000N highway-rail grade crossing, designated as DOT/AAR # 289 137V, milepost 169.55-M, should be closed, barricaded and abolished upon opening of the new grade separation to vehicular traffic;
- (5) the cost for the proposed improvements should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;

- (6) it is fair and reasonable that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund of the Motor Fuel Tax Law, the Canadian National/Illinois Central Railroad Company and Coles County be directed to bear their respective portions of the actual cost of the proposed improvements as shown in *Table 1: Cost Division* below;

TABLE 1: COST DIVISION

FISCAL YEAR	ESTIMATED PROJECT COST	GCPF ⁽¹⁾	ILLINOIS CENTRAL RR ⁽²⁾	COLES COUNTY ⁽³⁾
	\$9,433,400			
2005		\$ 900,000		
2006		\$3,260,100	\$256,305	\$5,016,095
TOTALS	\$9,433,400	\$4,160,100	\$256,305	\$5,016,095

Notes:

1. Grade Crossing Protection Fund assistance for the CH 18 bridge project shall not exceed \$4,160,000, \$900,000 in state fiscal year 2005 (July 1, 2004 – June 30, 2005) and \$3,260,100 in state fiscal year 2006 (July 1, 2005 – June 30, 2006).
 2. Funding assistance provided by the Canadian National/Illinois Central Railroad Company shall not exceed \$256,305.
 3. Coles County shall be responsible for all remaining project costs, after payment from the Grade Crossing Protection Fund and the Canadian National/Illinois Central Railroad Company.
 4. Coles County shall be responsible for all future maintenance costs for the new CH 18 Bridge.
 7. For a detailed breakdown of eligible costs and cost divisions, see Petitioner's Exhibit 1.
- (7) assistance from the Grade Crossing Protection Fund in the amount of \$900,000, to cover the costs of Preliminary Engineering, Right-of-Way Acquisition and Utility Relocation, should be obligated at this time. Coles County should be required to submit a supplemental petition for additional payments from the Grade Crossing Protection Fund. Any supplemental petition filed by Coles County for additional assistance from the Grade Crossing Protection Fund should include evidence to show that all previous assistance from the Grade Crossing Protection Fund has been paid out to Coles County, or that the County has submitted bills to the Department bills for work items eligible for reimbursement from the Grade Crossing Protection Fund;
- (8) 625 ILCS 5/18c-1701 and 1704 require each “person”, as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Commission that permission and authority be, and they are hereby granted, to the County of Coles to construct the new CH 18/1000N highway overpass structure over the Canadian National/Illinois Central Railroad Company's track, located near Mattoon, Coles County, Illinois, as set forth in Petitioners Exhibit 1.

IT IS FURTHER ORDERED that the proposed structure shall comply with 92 Illinois Administrative Code, Part 1500 and the vertical clearance requirements of the Illinois Commercial Transportation Law (625 ILCS 5/18c-7401(8)).

IT IS FURTHER ORDERED that the existing CH 18/1000N highway-rail grade crossing, designated as DOT/AAR # 289 137V, milepost 169.55-M, should be closed, barricaded and abolished when the grade separation is open to public traffic.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Finding 5 of this Order.

IT IS FURTHER ORDERED that assistance from the Grade Crossing Protection Fund in an amount not to exceed \$900,000, to cover the costs of Preliminary Engineering, Engineering, Right-of-Way Acquisition and Utility Relocation, shall be obligated at this time.

IT IS FURTHER ORDERED that requests for further assistance from the Grade Crossing Protection Fund must be submitted in the form of a supplemental petition to the Commission. Any supplemental petition submitted must include evidence to show that the entire amount of the original payment from the Grade Crossing Protection Fund has been paid out to Coles County, or that the County has submitted bills to the Department bills for work items eligible for reimbursement from the Grade Crossing Protection Fund.

IT IS FURTHER ORDERED that all bills for expenditures authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the District Five Office of the Illinois Department of Transportation at P.O. Box 610, Paris, Illinois 61944. The Department shall submit a copy of all bills to the Director of Processing and Information, Transportation Bureau of the Commission. The final bill for expenditures from each party shall be clearly marked "Final Bill". Authorization for reimbursement from the Grade Crossing Protection Fund for this project shall expire, and the Department shall de-obligate all remaining Grade Crossing Protection Fund dollars, twenty-four (24) months after the completion date specified in this or any Supplemental Order issued by the Commission for this project.

IT IS FURTHER ORDERED that Coles County shall submit copies of detailed plans and estimates of the CH 18/1000N structure to both the Illinois Department of Transportation and the Canadian National/Illinois Central Railroad Company for their review and approval. Both the Department and the Company shall furnish to the Commission a statement of their approval or disapproval thereof.

IT IS FURTHER ORDERED that Coles County shall, at six (6) month intervals from the date of Commission Order subsequent to this Agreement, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a written report stating the progress it has made toward completion of the work herein required. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the County employee responsible for management of the project.

IT IS FURTHER ORDERED that the Canadian National/Illinois Central Railroad Company shall submit to the Director of Processing and Information, Transportation Bureau of the Commission within sixty (60) days of the completion of the work herein required, a United States Department of Transportation Inventory Form (#6180.71).

IT IS FURTHER ORDERED that Coles County be, and it is hereby required and directed to submit a written notice, to the Director of Processing and Information, Transportation Bureau of the Commission, of the date the work herein required of it has been completed. Said notice shall be submitted within five (5) days after said completion date. A copy of said notice must also be submitted to the Canadian National/Illinois Central Railroad Company.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED THAT any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED THAT requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED THAT the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 20th day of October, 2004.

*Edward C. Husley*₂

Chairman

JUDGE	<i>[Signature]</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>